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**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

SECRETARIAT

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**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

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DATE OF REFERRAL: 6/14/05

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**SOURCE:**

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**RESPONDENTS:**

Jack Thomas  
Lamutt for Congress and Robert Bruce Lamutt, in  
his official capacity as treasurer<sup>1</sup>  
Robert Bruce Lamutt

**RELEVANT STATUTES AND  
REGULATIONS:**

2 U.S.C. § 432(b)(3)  
2 U.S.C. § 432(c)(5)  
2 U.S.C. § 439a(b)  
2 U.S.C. § 434(b)  
2 U.S.C. § 441a-1(b)  
11 C.F.R. § 104.3(b)  
11 C.F.R. § 104.14(d)  
11 C.F.R. § 400.22(b)  
11 C.F.R. § 400.25

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

Department of Justice

<sup>1</sup> Robert Bruce Lamutt has served as his own committee treasurer twice since Lamutt for Congress was first organized in April 2003. He was treasurer from April 25, 2003 until February 16, 2004, at which point Carolyn D. Meadows was named treasurer. Lamutt resumed the role of treasurer on April 15, 2005.

**I. INTRODUCTION**

This matter concerns two issues arising out of Robert Bruce Lamutt's 2004 campaign for Georgia's sixth congressional district. The first issue relates to the embezzlement of \$40,927.96 by Jack Thomas, the campaign manager for Lamutt for Congress ("Lamutt Committee" or "Committee"). This activity first came to the attention of the Commission as the result of an inquiry by the Reports Analysis Division ("RAD") regarding the Lamutt Committee's disclosure of unauthorized disbursements in its 2004 April Quarterly Report. In its response to RAD, the Lamutt Committee stated that the unauthorized disbursements appearing in the report were "fraudulent disbursements made by former campaign staffers." Because RAD provided a description of this activity in its referral of the apparent reporting violation discussed below, we are including the embezzlement issue in our analysis.<sup>7</sup>

The second issue addressed in this report stems from a RAD referral relating to the failure of Lamutt for Congress and Robert Bruce Lamutt, in his official capacity as treasurer, and Robert Bruce Lamutt to timely file a post-election FEC Form 10 notifying the Commission that Lamutt spent an additional \$65,000 in personal funds to support his candidacy after he lost the August 10, 2004, primary run-off election.

Based on all the available information, this Office recommends that the Commission open a MUR, make reason to believe findings as detailed in this report, \_\_\_\_\_, and authorize an investigation.

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**II. FACTUAL AND LEGAL ANALYSIS**

**A. The Embezzlement of Lamutt Committee Funds**

**1. Background**

The available information indicates that on or about January 2004, candidate Lamutt was alerted by a Lamutt Committee staffer to unspecified problems with the campaign's finances. At some point thereafter, Lamutt apparently confronted his campaign manager, Thomas, who confessed to having stolen campaign funds.

The available information indicates that Thomas served as the Lamutt Committee's campaign manager from July 19, 2003, through February 1, 2004, and in that position supervised the day-to-day operation of the campaign and its employees.<sup>4</sup> Attachment 2 at Preamble & ¶ 3. Thomas was "ultimately responsible for the Committee's finances," including collecting and recording contributions, tracking disbursements, making deposits into the appropriate bank account and accounting for all receipts. *Id.* The available information also indicates that Thomas received the Lamutt Committee's bank statements and appears to have been in charge of

<sup>3</sup> Much of the information referenced herein relating to Thomas's embezzlement of funds from the Lamutt Committee was derived from the plea agreement package filed in *United States v. Thomas*, Crim No. 05-00423 (D.D.C. filed Jan. 24, 2006) (the criminal case resulting from DOJ's prosecution of Thomas). The plea agreement package (hereinafter "plea agreement") includes executed copies of the plea agreement (Attachment 1) and the factual basis of plea (Attachment 2), which sets forth the facts surrounding Thomas's embezzlement scheme.

<sup>4</sup> Although the plea agreement describes Thomas as the Lamutt Committee's campaign manager, both the campaign's audit report and Thomas's employment agreement with the Lamutt Committee state that he held the position of deputy campaign manager. See Internal Review of the Lamutt Committee Final Report (May 24, 2004). It does not appear, however, that anyone else besides Thomas served as the Lamutt Committee's campaign manager.

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1 account reconciliation. Further, although Lamutt was the campaign's treasurer of record, in  
2 actuality Thomas prepared and filed the Committee's disclosure reports with the Commission.  
3 *Id.* ¶¶ 3 & 14 a - c.

4 According to the facts outlined in the plea agreement, the Lamutt Committee had certain  
5 internal procedures designed to restrict staff access to campaign funds. For example, while  
6 authorized staffers were permitted to incur "nominal campaign related expenditures," all  
7 expenditures over that "nominal" amount required the candidate's approval. Attachment 2 at ¶ 5.  
8 Checks for more than \$1,000 drawn on the Lamutt Committee's bank account required two  
9 signatures, one of which had to be the candidate's. *Id.* at ¶ 6. Additionally, the campaign's staff  
10 was prohibited from obtaining a bank debit card on the Lamutt Committee's bank account. *Id.* at  
11 ¶ 7. There is, however, some conflicting information relating to the level of fiscal oversight  
12 employed by the Lamutt Committee. According to a news article, Lamutt "made it a practice to  
13 look over his campaign books every week to 10 days." Lisa Getter, *Campaigns Catching Hands*  
14 *in the Till; Amid Record Donations and Little Oversight, More Candidates and PACs Become*  
15 *Victims of Embezzlement*, L.A. TIMES, May 31, 2004, at 1. This article, however, does not  
16 specify the time period during which Lamutt employed this practice, nor explains how Thomas  
17 was able to continue using the Committee's bank debit card after he was terminated.<sup>5</sup>

18 DOJ's investigation revealed that, notwithstanding the Committee's internal procedures,  
19 Thomas embezzled \$34,855 from the Lamutt Committee's bank account between September

<sup>5</sup> According to DOJ, Lamutt fired Thomas soon after Thomas confessed to stealing funds from the campaign. The available information indicates that Thomas retained the Committee's bank debit card after leaving the campaign, on or about February 1, 2004, and continued using it for at least another 10 days.

1 2003 and February 2004 by issuing unauthorized checks to himself, his wife, Nancy Trott, and  
2 his brother-in-law, Rick Gant.<sup>6</sup> Attachment 2 at ¶¶ 9 – 11. Thomas forged the candidate's  
3 signature on most of these unauthorized checks. *Id.* at ¶ 12. Also, in direct contravention of the  
4 Committee's internal procedures, Thomas had a debit bank card issued in the Lamutt  
5 Committee's name and used the card to make \$6,072.96 worth of unauthorized purchases. *Id.* at  
6 ¶¶ 7 – 8 & 13. Neither the candidate nor the campaign authorized the payments to Thomas, Trott  
7 and Gant or the purchases made with the bank debit card. *Id.* at ¶¶ 9 – 11 & 13. In an effort to  
8 conceal his scheme, Thomas inaccurately reported the Lamutt Committee's disbursements on the  
9 2003 October Quarterly Report, the amended 2003 October Quarterly Report and the 2003 Year-  
10 End Report.<sup>7</sup> *Id.* at ¶¶ 9 – 11 & 14 a – c.

11 On January 24, 2006, Thomas pled guilty to one count of mail fraud in violation of  
12 18 U.S.C. § 1341 in connection with his embezzlement of Lamutt for Congress campaign funds.<sup>8</sup>  
13 Sentencing is scheduled for October 26, 2006. Press Release, Department of Justice, *Former*  
14 *Campaign Manager Pleads Guilty to Defrauding Congressional Campaign*, Jan. 24, 2006, Saed  
15 Ahmed, *Campaign Aide Pleads Guilty*, ATLANTA J. CONSTITUTION, Jan. 25, 2006, at D6.

<sup>6</sup> According to the facts outlined in the plea agreement, Thomas hired Trott and Gant to work on the campaign. Attachment 2 at ¶ 4. Gant may have volunteered for the campaign. The Lamutt Committee's internal audit report states, however, that neither Trott nor Gant had employment contracts with the campaign and "were not considered employees of the campaign." See Internal Review of the Lamutt Committee Final Report (May 24, 2004).

<sup>7</sup> The Lamutt Committee disclosed unauthorized disbursements in an amended 2003 Year-End Report, the 2004 April Quarterly Report, and an amended 2004 April Quarterly Report. The campaign has not filed an amendment to its 2003 October Quarterly Report to reflect any unauthorized disbursements, even though Thomas began embezzling funds during that reporting period. Attachment 2 at ¶ 9.

<sup>8</sup> DOJ did not prosecute Trott or Gant in connection the embezzlement of funds from the Lamutt Committee. Trott and Gant are not being internally generated as respondents at this time because it is not known whether one or both of them had knowledge of, or participated with Thomas in, his embezzlement scheme.

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2. Jack Thomas's Liability

a. Commingling

Thomas is liable for commingling personal funds through his embezzlement scheme.

The Act prohibits the commingling of committee funds with "the personal funds of any individual," including officers of a committee. See 2 U.S.C. § 432(b)(3) and 11 C.F.R. § 102.15.

Thomas admitted that between September 2003 and February 2004 he embezzled \$40,927.96 from the Lamutt Committee. Attachment 1 at ¶¶ 1 – 4; Attachment 2. Thomas designated himself and his wife as the payees of at least \$28,510 in unauthorized checks drawn on the Lamutt Committee's bank account and deposited them into the joint account he shared with his wife. Subsequently, he used the funds for his personal benefit. Attachment 2 at ¶¶ 9 – 10. Thomas improperly transferred campaign funds for his own personal use, and in doing so commingled Lamutt Committee funds with his own funds in violation of 2 U.S.C. § 432(b)(3).<sup>9</sup>

Thomas also admitted that he drew \$6,345 in unauthorized checks on the Lamutt Committee's bank account, naming his brother-in-law, Gant, as payee. Attachment 2 at ¶ 11. The available information indicates that Gant used these campaign funds for his own personal use. Thomas's improper transfer of \$6,345 in Lamutt Committee funds to Gant resulted in the improper commingling of those funds with Gant's personal funds in violation of 2 U.S.C. § 432(b)(3).

<sup>9</sup> The Commission has previously made reason to believe and probable cause findings for commingling in other matters where an individual has misappropriated committee funds. See, e.g., MUR 5721 (Lockheed Martin Employees PAC) (finding reason to believe that assistant treasurer knowingly and willfully violated the Act by commingling committee funds with his personal funds through an embezzlement scheme); MUR 5610 (Haywood) (finding reason to believe assistant treasurer knowingly and willfully violated the Act by commingling committee funds for personal use); MUR 2602 (Rhodes) (finding probable cause to believe that the Act was violated when committee funds were deposited into the candidate's personal account); MUR 3585 (Tsongas) (finding probable cause to believe that the committee's chief fundraiser knowingly and willfully violated the Act by commingling campaign contributions with personal funds).

b. Personal Use

Thomas also is personally liable for converting campaign funds for his personal use. The Act prohibits a person from converting contributions or donations to a candidate's authorized committee for his or her personal use. 2 U.S.C. § 439a(b)(1). The Act sets forth examples of *per se* instances of personal use, such as using campaign contributions or donations for mortgages or rental payments, clothing expenses, or household food items. *See* 2 U.S.C. § 439a(b)(2)(A)-(I); *see also* 11 C.F.R. § 113.1(g). In addition, the Act considers a contribution or donation converted for personal use if "the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective" of the campaign. 2 U.S.C. § 439a(b)(2); *see also* AO 2001-9 (explaining that, "if the obligation would exist even in the absence of the candidacy or even if the officeholder were not in office, then the use of funds for that obligation generally would be personal use").

Thomas acknowledged converting campaign funds for his own personal use in violation of 2 U.S.C. § 439a(b)(1) by issuing checks worth \$28,510 to himself and his wife and making \$6,072.96 worth of purchases with the secretly procured bank debit card. Attachment 2 at ¶¶ 9 – 10 & 13. Based on the available information, it appears that Thomas deposited the checks into a joint account he held with his wife and used the Committee's bank debit card to take cash advances and purchase a variety of items and services incurred irrespective of his involvement with the Lamutt campaign. Among Thomas's purchases with the bank debit card were electronics, car repairs, household items, women's clothing, a gym membership and car rentals. *See* Internal Review of the Lamutt Committee Final Report (May 24, 2004).

Additionally, Thomas is liable for converting \$6,345 in campaign funds for the personal use of Gant in violation of 2 U.S.C. § 439a(b)(1). Attachment 2 at ¶ 11. Although we do not

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1 know precisely what Gant used these Lamutt Committee funds for, it is likely under these  
2 circumstances that they were used to pay personal bills that were unconnected with any  
3 involvement Gant had with the Lamutt campaign.

4 c. Personal Liability for Lamutt Committee's Failure to Report  
5 Disbursements  
6

7 Thomas, even though he was not formally designated as the Lamutt Committee's  
8 treasurer, acted as the campaign's *de facto* treasurer.<sup>10</sup> According to the plea agreement, Thomas  
9 was responsible for collecting and recording political contributions, depositing contributions into  
10 the appropriate bank account, accounting for receipts, and tracking all disbursements as well as  
11 preparing and filing FEC disclosure reports. Attachment 2 at ¶ 3. Thomas, as the *de facto*  
12 treasurer, tracked disbursements and prepared and filed the Lamutt Committee's disclosure  
13 reports, and therefore may be held liable for their accuracy and completeness.<sup>11</sup> See *e.g.*, *FEC v.*  
14 *Committee to Elect Bennie O. Batts*, No. 87-5789 (S.D.N.Y. Feb. 24, 1989); see also (MUR 5646

<sup>10</sup> The Act requires that every political committee have a treasurer. 2 U.S.C. § 432(a). No expenditure can be made for or on behalf of a political committee without the authorization of the treasurer or his or her designated agent. *Id.* The Statement of Organization that each principal campaign committee of a candidate files must include the name and address of the treasurer of the committee and the name, address, and position of the custodian of the committee's books and accounts. 11 C.F.R. § 102.2(a)(1). According to the Statement of Organization filed in April 2003, Robert Bruce Lamutt was the designated treasurer. Lamutt's electronic signature was affixed to the 2003 October Quarterly Report, the amended 2003 October Quarterly Report and the 2003 Year-End Report, which reports Thomas prepared and filed.

<sup>11</sup> The Act requires each treasurer of a political committee to file reports of receipts and disbursements in accordance with the provisions of 2 U.S.C. § 434. See 2 U.S.C. § 434(a)(1) and 11 C.F.R. §§ 104.1(a) and 104.3(a) & (b). These reports must include, *inter alia*, the amount of cash on hand at the beginning and end of a reporting period, the total amount of receipts and disbursements, the identification of each person who makes a contribution in excess of \$200 in an election cycle, and the name and address of each person to whom an expenditure exceeding \$200 is made together with the date, amount and purpose of the expenditure. See 2 U.S.C. § 434(b). Committee treasurers and any other person required to file any report or statement under the Commission's regulations and under the Act, are personally responsible for the timely and complete filing of the report or statement and for the accuracy of any information or statement contained in it. 11 C.F.R. § 104.14(d). Committee treasurers are also required to record the name and address of every person to whom a disbursement is made, together with the date, amount, and purpose of the disbursement. 2 U.S.C. § 432(c)(5). In addition, for each disbursement in excess of \$200 by or on behalf of the Committee, the treasurer is obliged to obtain and keep a receipt, invoice or cancelled check. *Id.* and 11 C.F.R. § 102.9(b)(2).

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1 Jesse Burchfield) (campaign manager acting as treasurer found liable for reporting violations);  
2 (MUR 5610) (Haywood) (assistant treasurer performing duties of treasurer liable for failing to  
3 account for disbursements and report them to the Commission); (MUR 5453) (Giordano for U.S.  
4 Senate Committee) (deputy treasurer functioning as *de facto* treasurer held liable for accepting  
5 excessive and prohibited contributions and underreporting receipts on behalf of committee). As  
6 a result, Thomas, in his personal capacity, violated 2 U.S.C. §§ 432(c)(5) and 434(b)(4) & (6)(A)  
7 when he admitted inaccurately accounting for at least \$16,742.14 in disbursements and preparing  
8 and filing the 2003 October Quarterly report, the amended 2003 October Quarterly report and the  
9 2003 Year-end report.<sup>12</sup> Attachment 2 at ¶ 14, a - c.

10 Based on the foregoing, we recommend that the Commission find reason to believe that  
11 Thomas knowingly and willfully violated 2 U.S.C. §§ 432(b)(3), 432(c)(5), 434(b)(4) & (6)(A)  
12 and 439a(b) and 11 C.F.R. § 104.3(b).<sup>13</sup>

13 3. The Lamutt Committee's Liability for Failing to Report Disbursements

14 While the Lamutt Committee's failure to accurately report disbursements in the 2003  
15 October Quarterly Report, the amended 2003 October Quarterly Report and the 2003 Year-End

<sup>12</sup> The Lamutt Committee reported \$24,185.82 in unauthorized expenditures after Thomas was fired from the campaign. See 2004 April Quarterly Report.

<sup>13</sup> The phrase knowing and willful indicates that "actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H 2778 (daily ed. May 3, 1976); see also *Federal Election Comm'n v. John A. Dramasi for Cong. Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986) (distinguishing between "knowing" and "knowing and willful"). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge" that an action was unlawful. *United States v. Hopkins*, 916 F.2d 207, 214 (5<sup>th</sup> Cir. 1990). Knowing and willful scienter is necessary for criminal liability under the Act. See 2 U.S.C. § 437g(d); see also *Faucher v. FEC*, 743, F. Supp. 64, 71 (D. Maine 1990) (Attorney General has criminal enforcement role only for knowing and willful violations); *U.S. v. Tonry*, 433 F. Supp. 620, 622 (D. Maine 1977) (defendants cannot be convicted of violating the Act unless each charged violation was in fact knowing and willful). Therefore, Thomas's admission of criminal guilt in connection with the campaign funds he embezzled from the Lamutt Committee and failed to disclose to the Commission is conclusive proof that the violations at issue were knowing and willful. Attachment 1 at ¶¶ 2 - 3.

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1 Report stems from Thomas's embezzlement of campaign funds, the Committee nevertheless  
2 violated the Act when it filed the resulting inaccurate reports. Under the Act, the Lamutt  
3 Committee, through its treasurer, was required to account accurately for disbursements and  
4 report them to the Commission. 2 U.S.C. §§ 432(c)(5), 434(b)(4)(H)(v), (6)(B)(v); 11 C.F.R.  
5 § 104.3(b). Ultimately, the Lamutt Committee's treasurer, who in this case was the candidate,  
6 was responsible for the timely and complete filing of the disclosure reports and for the accuracy  
7 of the information contained therein and is therefore, liable for the inaccurate reports. 11 C.F.R.  
8 § 104.14(d). The available information indicates that the Lamutt Committee failed to institute  
9 internal controls and oversight policies sufficient to protect its assets, suggesting that these  
10 deficiencies may have contributed to the misappropriation of funds and misreporting of  
11 disbursements to the Commission.

12 Thomas's ability to write checks to himself, Trott and Gant for over \$1,000 without the  
13 candidate's approval and dual signatures, as well as his acquisition of the bank debit card, *see*  
14 *supra* pp. 4 – 5, appear to demonstrate that the Committee's internal controls were easily  
15 circumvented and were thus inadequate to protect the campaign's financial assets. In addition,  
16 the Lamutt Committee apparently failed to segregate responsibility for the control over receipts  
17 and disbursements from the reconciliation of its bank account. The available information  
18 suggests that the flow of cash into and out of the campaign was under the complete control of a  
19 single individual - Thomas. At the very least, had the Lamutt Committee segregated its cash  
20 management practices, the checks issued to Trott and Gant, who apparently were not officially  
21 on the payroll, and the use of the prohibited bank debit card would likely have been uncovered  
22 earlier, perhaps preventing some of the Committee's losses. Additionally, there was the apparent  
23 failure on the part of the Lamutt Committee to ensure that anyone, including Lamutt as the

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1 treasurer, *see supra* pp. 4 – 5, exercised any meaningful supervision over Thomas in the  
2 performance of his duties.<sup>14</sup> It appears that the Lamutt campaign's lack of basic internal controls  
3 (e.g., separation of duties) and oversight may have created an environment in which Thomas was  
4 able to use his unfettered control over the Lamutt Committee's funds to perpetrate his  
5 embezzlement scheme, which included misreporting disbursements. Therefore, that Thomas's  
6 conduct was illegal and that the treasurer (under whose signature reports were filed) and the rest  
7 of the campaign were apparently unaware of Thomas's activity may mitigate, but does not  
8 vitiate, the Lamutt Committee's liability for filing the three inaccurate disclosure reports.

9 Based on the plea agreement, the embezzlement of funds from the Lamutt Committee  
10 extended from September 2003 through February 2004. Attachment 2 at ¶¶ 9 – 11 & 13. The  
11 available information suggests that the campaign discovered Thomas's embezzlement at some  
12 point in early 2004. The Lamutt Committee reported \$39,780.82 in unauthorized expenditures  
13 on two amended 2003 Year-End disclosure reports, the 2004 April Quarterly Report and an  
14 amended 2004 April Quarterly Report. However, the Lamutt Committee has not amended its  
15 2003 October Quarterly Report to reflect \$1,147.14 in unauthorized disbursements made by  
16 Thomas during that reporting period in violation of the Act and Commission regulations.

17 Based on the foregoing, there is reason to believe that Lamutt for Congress and Robert  
18 Bruce Lamutt, in his official capacity as treasurer, violated 2 U.S.C. §§ 432(c)(5),  
19 434(b)(4)(H)(v) & (6)(B)(v), and 11 C.F.R. §§ 104.3(b) by failing to record and report accurately  
20 certain disbursements.

<sup>14</sup> In the past, the Commission has noted insufficient oversight during its analysis of committee liability. See, e.g., MUR 2602 (Rhodes) (finding probable cause of violations when finance chair "was not supervised or held accountable on a regular basis for his fundraising activities"); MUR 3585 (Tsongas) (noting that the committee's financial operations lacked a "system of checks and balances" because the chief fundraiser controlled both the receipts and the disbursements).

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**B. Late Reporting of a Personal Funds Expenditure**

**1. Background**

Lamutt filed FEC Form 2, Statement of Candidacy, in April 2003. As part of the Form 2, Lamutt declared his intention to expend personal funds exceeding the threshold amount in the primary election by \$650,000. He subsequently lost the August 10, 2004, primary run-off election.<sup>15</sup> In all, Lamutt made \$1,615,000 in expenditures from his personal funds, all designated for the primary election cycle.

On December 3, 2003, Lamutt loaned his campaign \$518,000, triggering and exceeding the reporting threshold of \$350,000, which required the filing of FEC Form 10.<sup>16</sup> See 2 U.S.C. § 441a-1(b)(1)(C); 11 C.F.R. § 400.21(b). The Lamutt Committee timely filed the requisite FEC Form 10 on that same day. Lamutt made six additional loans totaling \$1,015,000 from personal funds to the Lamutt Committee between March 13, 2004 and August 3, 2004. For each of these expenditures from personal funds, which aggregated in excess of \$10,000, the Lamutt Committee timely filed the requisite FEC Form 10. See 2 U.S.C. § 441a-1(b)(1)(D) and 11 C.F.R. § 400.22(b).

The day after losing the primary run-off election, the Lamutt Committee contacted RAD and inquired whether it was necessary to file an FEC Form 10 for subsequent loans made to the campaign. While noting that the regulations were unclear, RAD recommended that the Committee file the FEC Form 10. On August 12, 2005, two days after the election, the candidate

<sup>15</sup> The failure of the six candidates to win a majority in the July 20, 2004 primary election necessitated the run-off election between the two top vote getters, Lamutt and Tom Price. *Early Returns Suggest Three Runoffs For Open House Seats*, AUGUSTA CHRONICLE, July 21, 2004, at B06.

<sup>16</sup> Prior to filing the first FEC Form 10, Lamutt had made the following loans to his campaign: \$1,000 on April 15, 2003; \$8,000 on May 10, 2003; \$2,000 on June 6, 2003; and \$71,000 on June 28, 2003.

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1 loaned the campaign an additional \$65,000 but did not file an FEC Form 10.<sup>17</sup> RAD sent the  
2 Lamutt Committee a Request for Additional Information on March 3, 2005, asking that it clarify  
3 disclosure of the \$65,000 loan in its 2004 April Quarterly Report or immediately file an FEC  
4 Form 10. The Lamutt Committee responded that its failure to file the FEC Form 10 was based  
5 on an understanding that the filing was unnecessary because Lamutt was no longer a candidate at  
6 the time the loan was made. On March 29, 2005, after being informed by RAD that the relevant  
7 law made no distinction between filling FEC Form 10s before or after the date of an election, the  
8 Lamutt Committee filed an FEC Form 10, disclosing the \$65,000 in expenditures from the  
9 candidate's personal funds for the purpose of retiring the campaign's 2004 primary run-off  
10 election debt. This FEC Form 10 was filed 228 days late.

11 2. The Lamutt Committee's Liability for Failing to File the Post-election  
12 FEC Form 10  
13

14 Candidates who make expenditures from personal funds to their campaigns in excess of a  
15 specified threshold amount must meet particular reporting and disclosure requirements.<sup>18</sup> Not  
16 later than 24 hours after a congressional candidate "makes or obligates to make an aggregate  
17 amount of expenditures from personal funds in excess of \$350,000 in connection with any  
18 election, the candidate shall file a notification" with the Commission, each candidate in the same

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<sup>17</sup> The Committee's 2004 October Quarterly Report disclosed the \$65,000 loan and noted that it was designated for the 2004 run-off election.

<sup>18</sup> An expenditure from personal funds includes direct contributions, an expenditure made by a candidate using personal funds, loans made by the candidate using personal funds, or a loan secured using such funds to the candidate's authorized committee. 2 U.S.C. § 434(a)(6)(B)(i); 11 C.F.R. § 400.4. Congressional candidates are required to declare as part of the Statement of Candidacy, FEC Form 2, the total amount of expenditures from personal funds the candidate intends to make with respect to the election that will exceed \$350,000. 2 U.S.C. § 441a-1(b)(1)(B); 11 C.F.R. §§ 400.20 and 400.9. Such declarations of intent must be filed within 15 days of becoming a candidate. See 11 C.F.R. §§ 400.20(a)(1). Under specific circumstances, a candidate's personal expenditures could entitle his opponents to a threefold increase in the contribution limit under 2 U.S.C. § 441a(a)(1)(A) and a waiver of the limits on coordinated party expenditures under 2 U.S.C. § 441a(d). See 2 U.S.C. § 441a-1(a)(1); 11 C.F.R. § 400.41; see also 2 U.S.C. § 441a-1(a)(2)(B)(ii); 11 C.F.R. § 400.10.

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1 election and the national party of each opposing candidate. 2 U.S.C. § 441a-1(b)(1)(C);  
2 11 C.F.R. § 400.21(b). After this initial notification, the Commission's regulation requires the  
3 filing of additional FEC Form 10s "when the candidate makes expenditures from personal funds  
4 *in connection with the election* exceeding \$10,000." See 11 C.F.R. § 400.22(b) (emphasis  
5 added); see also 11 C.F.R. § 400.4(a)(1) (defining "[e]xpenditure from personal funds" as  
6 including an expenditure "for the purpose of influencing the election in which he or she is a  
7 candidate"). Each notification must include the date and the amount of each expenditure and the  
8 total amount of expenditures from personal funds that the candidate has made or obligated to  
9 make, with respect to an election. 2 U.S.C. § 441a-1(b)(1)(E); 11 C.F.R. § 400.23.<sup>19</sup> Although  
10 the FEC Form 10 is signed by the committee treasurer, the candidate is responsible for ensuring  
11 that it is filed in a timely manner. 11 C.F.R. § 400.25.

12 Here, the post-election loan of \$65,000 from Lamutt to his campaign on August 12, 2004,  
13 was designated for use in retiring the campaign's primary run-off election debt. Under these  
14 circumstances, the post-primary expenditure from the candidate's personal funds was both "in  
15 connection with" the primary and "for the purpose of influencing" the primary, thus requiring the  
16 filing of an FEC Form 10. See 2 U.S.C. § 441a-1(b)(1)(D) and 11 C.F.R. § 400.222(b); see also  
17 *Federal Election Commission v. Haley*, 852 F.2d 1111, 1115 (9th Cir. 1988) (stating that "funds  
18 raised after an election to retire election campaign debts are just as much *for the purpose of*  
19 *influencing* an election and *in connection with* the election as are those contributions received  
20 before the election") (emphasis added); see also MUR 5607 (Socas for Congress) (where the

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<sup>19</sup> An election cycle runs from the date after the most recent election for the specific office to the date of the next election for that office. See 11 C.F.R. § 400.2(a). The primary and general election are considered separate election cycles. See 11 C.F.R. § 400.2(b).

Commission found reason to believe and conciliated with respondents who filed a post-primary FEC Form 10 late).

Accordingly, this Office recommends that the Commission find reason to believe that Lamutt for Congress and Robert Bruce Lamutt, in his official capacity as treasurer, violated 2 U.S.C. § 441a-1(b)(1)(D) and 11 C.F.R. § 400.22(b). Since the statute and regulations obligate the candidate to ensure that appropriate filings are made with respect to his expenditures from personal funds, this Office also recommends that the Commission find reason to believe that Robert Bruce Lamutt violated 2 U.S.C. § 441a-1(b)(1)(D) and 11 C.F.R. § 400.25.<sup>20</sup>

<sup>20</sup> No further investigation is required regarding the Lamutt Committee's failure to file the post-election FEC Form 10.

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**V. RECOMMENDATIONS**

1. Open a MUR;
2. Find reason to believe that Jack Thomas knowingly and willfully violated 2 U.S.C. §§ 432(b)(3), 432(c)(5), 439a(b), 434(b)(4) & (6)(A), and 11 C.F.R. § 104.3(b);
3. Find reason to believe that Lamutt for Congress and Robert Bruce Lamutt, in his official capacity as treasurer, violated 2 U.S.C. §§ 432(c)(5), 434(b)(4)(H)(v) & (6)(B)(v), 441a-1(b)(1)(D) and 11 C.F.R. §§ 104.3(b), 400.22(b);
4. Find reason to believe that Robert Bruce Lamutt violated 2 U.S.C. § 441a-1(b)(1)(D) and 11 C.F.R. § 440.25;
5. \_\_\_\_\_
6. Approve the attached Factual and Legal Analyses;
7. \_\_\_\_\_
8. Approve the appropriate letters.

Lawrence H. Norton  
General Counsel

Lawrence L. Calvert, Jr.  
Deputy Associate General Counsel

Date:

8/9/06

By:

Kathleen Guith

Kathleen Guith  
Acting Assistant General Counsel

Marianne Abely  
Marianne Abely  
Attorney

10044263259

**Attachments:**

1. Plea Agreement
2. Factual Basis for Plea

10044263260

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

*Excluded Copy*  
**FILED**

JAN 24 2006

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )

v. )

Criminal No. )

JACK THOMAS, )

Count One: 18 U.S.C. § 1341  
(Mail Fraud) )

Defendant. )

**PLEA AGREEMENT**

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States of America and the Defendant, JACK THOMAS, agree as follows:

1. The Defendant is entering this agreement and is pleading guilty freely and voluntarily without promise or benefit of any kind, other than contained herein, and without threats, force, intimidation, or coercion of any kind.

2. The Defendant knowingly, voluntarily, and truthfully admits the facts contained in the attached Factual Basis for Plea.

3. The Defendant agrees to plead guilty to a one-count Information charging him with one count of mail fraud in violation of 18 U.S.C. § 1341. The Defendant admits that he is guilty of this crime, and the Defendant understands that he will be adjudicated guilty of this offense.

Attachment 1

Page 1 of 8

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4. The Defendant understands the nature of the offense to which he is pleading guilty, and the elements thereof, including the penalties provided by law. The maximum penalties for a violation of 18 U.S.C. § 1341 are twenty years of imprisonment, a fine of \$250,000, and a mandatory special assessment of \$100. The defendant also understands that the Court may impose a term of supervised release to follow any incarceration in accordance with 18 U.S.C. § 3583, and that, in this case, the authorized term of supervised release is at least two years but not more than three years. The Defendant also understands that the Court may impose restitution, costs of incarceration, and costs of supervision. The parties agree that the amount of restitution in this matter is \$40,927.96.

5. If the Court accepts Defendant's plea of guilty to one count of mail fraud in violation of 18 U.S.C. § 1341, and the Defendant fulfills each of the terms and conditions of this agreement, the United States agrees that it will not further prosecute the Defendant for crimes arising from the facts set forth in the Factual Basis for Plea.

6. The parties to this agreement agree that the Defendant's sentence is governed by 18 U.S.C. § 3553 and the United States Sentencing Guidelines, effective November 1, 2003, and that the Guideline applicable to the offense to which the Defendant is pleading guilty is U.S.S.G. § 2B1.1, Larceny,

Embezzlement, and Other Forms of Theft; Fraud and Deceit; and Forgery. The parties agree to recommend the following guideline calculations:

2B1.1(a) (1) Base Offense Level . . . . .	7
2B1.1(b) (1) (D) Amount of Loss between \$30,000	
and \$70,000 . . . . .	6
3B1.3 Abuse of a Position of Trust . . . . .	2
TOTAL . . . . .	15

7. Should the Defendant comply fully with his obligations under this agreement, the United States will recommend that the Defendant receive a two-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1, yielding a net offense level of 13 and a guideline range of 12-18 months imprisonment. The parties agree to recommend that no adjustment to the guideline level other than those discussed in this agreement is appropriate. The Defendant understands that these recommendations and agreements are not binding on the Court or the United States Probation Office, and that he will not be entitled to withdraw his plea of guilty if the Court rejects these recommendations. The Defendant further understands that while the Court must consult the Sentencing Guidelines, they are advisory, and the Defendant may be sentenced up to the statutory maximum.

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8. The Defendant understands and acknowledges that he may receive any sentence within the statutory maximum for the offense of conviction.

9. The United States cannot and does not make any promise or representation as to what sentence the Defendant will receive or what fines or restitution, if any, the Defendant may be ordered to pay. The Defendant understands that the sentence and the sentencing guidelines applicable to this case will be determined solely by the Court, with the assistance of the Probation Office, that the Court may impose the maximum sentence permitted by the statute, and that the Defendant will not be permitted to withdraw his plea regardless of the sentence calculated by the Probation Office or imposed by the Court.

10. The United States reserves the right to allocute as to the nature and seriousness of the offense and to make a recommendation as to sentencing. The attorneys for the United States will inform the Court and the Probation Office of: (1) this agreement; (2) the nature and extent of the Defendant's activities with respect to this case; and (3) all other information in its possession relevant to sentencing.

11. The United States will not ask that the Defendant be detained pending sentencing.

12. The Defendant, knowing and understanding all of the facts set out herein, including the maximum possible penalty that

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could be imposed, and knowing and understanding his right to appeal the sentence as provided in 18 U.S.C. § 3742, hereby expressly waives the right to appeal any sentence within the maximum provided in the statute of conviction (or the manner in which that sentence was determined) on the grounds set forth in 18 U.S.C. § 3742 or on any ground whatever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b).

13. If the Defendant fails to comply with any of the material conditions and terms set forth in this agreement, he will have committed a material breach of the agreement which will release the Government from its promises and commitments made in this agreement. Upon Defendant's failure to comply with any of the terms and conditions set forth in this agreement, the Government may fully prosecute the Defendant on all criminal charges that can be brought against him. With respect to such a prosecution:

a. The Defendant shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, or any other Federal rule, that Defendant's statements pursuant to this agreement or any evidence derived therefrom, should be suppressed or are inadmissible;

b. The Defendant waives any right to claim that evidence presented in such prosecution is tainted by virtue of the statements he has made; and

c. The Defendant waives any and all defenses based on the statute of limitations with respect to any such prosecution that is not time-barred on the date that this agreement is signed by the parties.

14. In the event of a dispute as to whether Defendant has knowingly committed any material breach of this agreement, and if the United States chooses to exercise its rights under the preceding paragraph, and if the Defendant so requests, the matter shall be submitted to the Court and shall be determined by the Court in an appropriate proceeding at which Defendant's disclosures and documents shall be admissible and at which time the United States shall have the burden to establish the Defendant's breach by a preponderance of the evidence.

15. The Defendant agrees that if the Court does not accept his plea of guilty, this agreement shall be null and void.

16. The Defendant understands that this agreement is binding only upon the United States Department of Justice, Criminal Division, Public Integrity Section. This agreement does not bind any United States Attorney's Office, nor does it bind any state or local prosecutor. It also does not bar or compromise any civil or administrative claim pending or that may



be made against the Defendant. If requested, however, the Public Integrity Section will bring this agreement to the attention of any other prosecuting jurisdiction and ask that jurisdiction to abide by the provisions of this plea agreement. The Defendant understands that other prosecuting jurisdictions retain discretion over whether to abide by the provisions of this agreement.

17. This agreement and the attached Factual Basis for Plea constitute the entire agreement between the United States and the Defendant. No other promises, agreements, or representations exist or have been made to the Defendant or the Defendant's attorneys by the Department of Justice in connection with this case.


18. The parties to this agreement agree that this agreement may be amended only by a writing signed by all parties and sanctioned by the Court.

10044263267

*January 27, 2006*  
Dated: ~~October~~ 27, 2005.

FOR THE Defendant

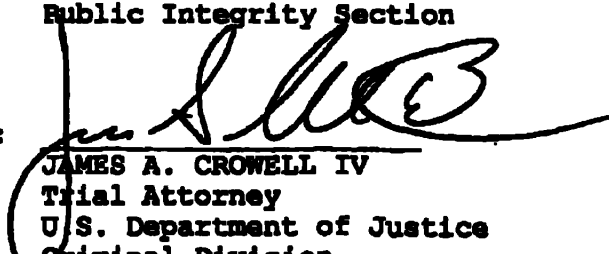
  
JACK THOMAS  
Defendant

  
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FOR THE UNITED STATES

NOEL L. HILLMAN  
Chief  
Public Integrity Section

By:

  
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Washington, DC 20005  
(202) 514-1412

*Executed  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, )

v. )

JACK THOMAS, )

Defendant. )

Criminal No. )

Count One: 18 U.S.C. § 1341  
(Mail Fraud) )

**FILED**

JAN 24 2006

**FACTUAL BASIS FOR PLEA**

NANCY MAYER WHITTINGTON (P. 10044263269)  
U.S. DISTRICT COURT

The United States of America, by and through its undersigned attorneys within the United States Department of Justice, Criminal Division, Public Integrity Section, and the Defendant, JACK THOMAS, personally and through his undersigned counsel, hereby stipulate to the following facts pursuant to United States Sentencing Guidelines § 6A1.1 and Rule 32(C)(1) of the Federal Rules of Criminal Procedure, that beginning in or about July 19, 2003 and continuing until approximately February 1, 2004, in the District of Columbia and elsewhere:

1. Defendant JACK THOMAS served as the Campaign Manager for the Robert Lamutt for Congress Committee, a federally registered fund-raising campaign committee ("the Committee"), which raised money to support the candidacy of Robert Lamutt for the United States House of Representatives in the 6<sup>th</sup> District of Georgia ("the Candidate").

Attachment 2

Page 1

of 6

2. The Committee, as required by the Federal Election Campaign Act of 1971, filed periodic reports of its financial and fundraising activity with the Federal Election Commission ("FEC"). 2 U.S.C. § 434.

3. In his capacity as Campaign Manager, Defendant JACK THOMAS supervised the day-to-day operation of the Committee's activities and its employees. Further, Defendant JACK THOMAS was ultimately responsible for the Committee's finances, including collecting and recording political contributions to the committee, depositing the funds in the appropriate bank accounts, accounting for funds received by the committee, tracking all disbursements from the committee, and reporting this information to the FEC in accordance with its rules and regulations.

4. Defendant JACK THOMAS hired his wife ("the Spouse") and his brother-in-law ("the Brother") to work for the Committee.

5. The Committee's disbursement procedures permitted authorized employees to incur nominal campaign related expenditures but any expenditure of more than a nominal value required the Candidate's approval.

6. Any check drawn on the Committee's bank accounts for more than \$1,000 required two signatures, one of which had to be the Candidate's.

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7. The Committee's disbursement procedures prohibited all Committee employees from obtaining a bank debit card on the Committee's bank account.

8. Defendant JACK THOMAS secretly had a bank debit card issued in the Committee's name that withdrew funds from the Committee's bank account when the card was charged. Defendant JACK THOMAS appointed himself signatory authority for the card.

9. From in or about September 2003 up to and including February 2004, Defendant JACK THOMAS drew checks on the Committee's bank account, totaling approximately \$24,200, naming himself as the payee. These payments were not authorized by the Candidate, members of the campaign or the Committee and were not reported to the FEC on the pertinent forms that Defendant JACK THOMAS prepared as required by law. Defendant JACK THOMAS deposited these checks into his and his Spouse's bank account and then used these funds for his personal benefit.

10. From in or about December 2003 up to and including January 2004, Defendant JACK THOMAS drew checks on the Committee's bank account, totaling approximately \$4,310, naming his Spouse as the payee. These payments were not authorized by the Candidate, members of the campaign or the Committee and were concealed and not reported to the FEC on the pertinent forms that Defendant JACK THOMAS prepared. Defendant JACK THOMAS deposited

these checks into his and his Spouse's bank account and then used these funds for his personal benefit.

11. From in or about December 2003 up to and including January 2004, Defendant JACK THOMAS drew checks on the Committee's bank account, totaling approximately \$6,345, naming his Brother as the payee. These payments were not authorized by the Candidate, members of the campaign or the Committee and were concealed and not reported to the FEC on the pertinent forms that Defendant JACK THOMAS prepared.

12. Defendant JACK THOMAS signed all of the unauthorized checks in his capacity as Campaign Manager. On most of these checks, in order to ensure that the bank would honor them, Defendant JACK THOMAS forged the Candidate's signature.

13. From in or about January 2004 up to and including February 2004, Defendant JACK THOMAS made purchases on the Committee's debit bank card, totaling approximately \$6,072.96. These charges were concealed and not authorized by the Candidate, members of the campaign or the Committee and were not reported to the FEC on the pertinent forms that Defendant JACK THOMAS prepared as required by law.

14. In his efforts to further his fraud scheme, Defendant JACK THOMAS made telephone calls, sent letters, and transmitted e-mails from Georgia to the District of Columbia, including, among others:


a. In or about October 2003, from the Committee's office in Georgia Defendant JACK THOMAS sent the October Quarterly FEC Report of Receipts and Disbursements delineating the Committee's expenditures by U.S. Mail to the FEC in the District of Columbia.


b. In or about January 2004, from the Committee's office in Georgia Defendant JACK THOMAS sent the Amended October Quarterly FEC Report of Receipts and Disbursements delineating the Committee's expenditures by U.S. Mail to the FEC in the District of Columbia.

c. In or about January 2004, from the Committee's office in Georgia Defendant JACK THOMAS sent the Year-End FEC Report of Receipts and Disbursements delineating the Committee's expenditures by U.S. Mail to the FEC in the District of Columbia.

Dated: *January 21, 2006*  
~~October 2005~~.

FOR THE Defendant


  
JACK THOMAS  
Defendant

  
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Defender  
Federal Public Defender  
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FOR THE UNITED STATES

NOEL L. HILLMAN  
Chief  
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By:

  
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Typed: 7/21/05

Records Section chron.

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